

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: John A. Russo
City Manager

Date: November 1, 2011

Re: Introduce an Ordinance Authorizing the Execution of a Lease for Real
Property between the City of Alameda, Lessor, and Karen Zimmerman and
Kenneth Edgerly (dba ABC Preschool)

BACKGROUND

On April 18, 2000, the Alameda Unified School District (AUSD) conveyed the Mastick School site property to the City of Alameda. The Mastick School site houses Mastick Senior Center (MSC), two apartments, as well as ABC Preschool, which occupies two adjoining modular buildings and yard area which are located directly behind MSC at 1525 Bay Street. ABC Preschool has been in operation at this location since 1983. Karen Zimmerman and Kenneth Edgerly have been the proprietors since June 1995 and are licensed to provide childcare services to children between the ages of two and six. The City assumed the Lease Agreement between ABC Preschool and AUSD upon acquisition of the Mastick School site property. The Agreement between ABC Preschool and AUSD expired on June 30, 2002. The City of Alameda then entered into a three-year Lease Agreement with Karen Zimmerman and Kenneth Edgerly effective May 1, 2003, with two, three-year renewal options. Effective February 1, 2007, the City of Alameda exercised its option to renew the Lease Agreement for the first three-year term. On November 1, 2010, the City offered Karen Zimmerman and Kenneth Edgerly a 10-month Lease Agreement. That agreement terminated on September 30, 2011.

DISCUSSION

The new Lease Agreement with ABC Preschool is for a three-year period, and provides for two, three-year options to renew. The monthly lease rent is \$2,220, with an annual adjustment based on the April Consumer Price Index for the San Francisco-Oakland-San Jose metropolitan area. This long-term agreement will provide ABC Preschool with the continuity and stability required to operate the preschool.

FINANCIAL IMPACT

The proposed Lease Agreement between the City of Alameda and ABC Preschool does not impact the General Fund. Lease rental revenues generated from ABC Preschool offset maintenance, operations, and improvements to the property. In addition,

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revenues assist in offsetting staffing expenses at the Mastick Senior Center, thereby reducing the General Fund burden.

RECOMMENDATION

Introduce an ordinance authorizing the execution of a lease for real property between the City of Alameda as Lessor, and Karen Zimmerman and Kenneth Edgerly, dba ABC Preschool, as Lessee, for preschool operation at 1525 Bay Street, Alameda.

Respectfully submitted,



Dale Lillard, Director
Alameda Recreation, Parks, & Golf Operations

Approved as to funds and account,



 Fred Marsh
Controller

Exhibit:

1. Lease Agreement

ORIGINAL

**City of Alameda
Lease Agreement**

This Lease Agreement is entered into on November 1, 2011 by and between the City of Alameda, (hereinafter referred to as "LESSOR"), and Karen Zimmerman and Ken Edgerly dba ABC Preschool, (hereinafter referred to as "LESSEE"). The parties agree as follows:

1. PREMISES/DESCRIPTION: LESSOR does hereby rent and lease to the LESSEE the premises described as two adjoined modular buildings, which includes two classrooms, two restrooms, kitchen, and outdoor play area located at 1525 Bay Street, City of Alameda, County of Alameda, State of California, (hereinafter referred to as "PREMISES"), as further described in Exhibit A.
2. TERM: The term of this Agreement shall commence on November 1, 2011, and shall be for three (3) years. The City shall retain the option to renew the Agreement for two (2), three-year terms. Should the Lease Agreement hold over after the expiration of the term of this Agreement, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated prescribed rent, subject to all terms and conditions of the Agreement.
3. RENT: As consideration for this Agreement, beginning with the commencement date the LESSEE agrees to pay to LESSOR the sum of Two Thousand, One Hundred Dollars (\$2,200) per month on or before the first day of each month. The City shall adjust the rent annually based on the April Consumer Price Index for the San Francisco-Oakland-San Jose Metropolitan area.
4. SECURITY DEPOSIT: LESSEE will deposit the sum of one month's rent with the LESSOR as a security deposit on or before the commencement date to secure LESSEE'S obligation under this Agreement. LESSOR shall continue to hold such security deposit to secure LESSEE'S performance under the Agreement.
5. TAXES: LESSEE recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of property taxes levied on such interest. LESSEE agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the lease hold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on LESSEE'S usage of the PREMISES that may be imposed upon LESSEE by law.
6. DELIVERY AND CONDITION OF PREMISES: The taking of possess of the subject premises by the Lessee shall constitute acknowledgment that the subject premises are in good and tenable condition. The Lessee agrees to accept said PREMISES in "as is" condition.
7. USE OF PREMISES: The Leased PREMISES shall be used only as a preschool in conformance with State mandated standards and licensing. The PREMISES

may be used by LESSEE for any purposes necessary or consistent with the administration or operation of a preschool and shall not use the PREMISES for overnight accommodations. LESSEE shall not use or permit anything to be done on or about the PREMISES which will in any way conflict with or violate any law, statutes, ordinances, orders, directives, or regulations of federal, state, county, or municipal authorities now in force or which may hereafter be enacted or promulgated.

8. UTILITIES: LESSEE shall be responsible for all utility expenses including electricity, gas, garbage, water, sewer services, cable, telephone, and all maintenance, repair, installation and deposits for these services used in connection with the premises. Upon written approval from the City of Alameda, the LESSEE may install in the assigned location(s) telephone and cable lines. The PREMISES will be restored to its original condition unless otherwise mutually agreed to by the parties hereto.
9. ALTERATIONS: LESSEE promises and agrees not to make or cause to be made any alterations or improvements upon said PREMISES except as set forth herein or upon the written consent of LESSOR first obtained. All alterations or improvements to said PREMISES shall remain for the benefit of LESSOR and shall not be removed unless otherwise expressly agreed in writing and shall be presumed to be an integral part of such PREMISES, except for the removal of playground equipment installed by the LESSEE. Upon any termination of this Agreement, any alterations or improvements theretofore made by LESSEE, with or without the consent of LESSOR, which in the opinion of LESSOR tends to detract from the usability of said PREMISES, shall within 30 days of service of written notice by LESSOR be removed by LESSEE and said PREMISES shall be restored at LESSEE'S expense to the condition in which they were prior to the said alterations or improvements.
10. MAINTENANCE AND REPAIR: LESSEE, at its cost, shall maintain, in good condition and repair, all portions of the PREMISES including, without limitation, all LESSEE'S personal property as well as the follow:
 - (a) Costs associated with the daily maintenance and janitorial services, including but not limited to supplies, contract services, minor alterations, repairs, and other maintenance costs.
 - (b) Interior improvements with the written consent of the LESSOR including carpeting and floor coverings, drapery and other window treatments, and other interior improvements.
 - (c) Damage to the PREMISES resulting from the acts or omissions of LESSEE or its authorized representatives, employees, guests, or students. LESSEE further agrees to pay LESSOR on demand for any damages to the premises as a result of misuse or abuse of the PREMISES.

- (d) LESSEE shall report all problems and maintenance needs as soon as practicable to LESSOR.
- (e) LESSEE shall maintain the exterior of the PREMISES, which includes keeping the area surrounding the PREMISES free and clear of debris. LESSEE will also maintain and ensure that the Astroturf flooring material is installed on the front walkway in a secure fashion.

11. DAMAGE AND DESTRUCTION: If the leased PREMISES is damaged by fire or other casualty, the PREMISES may be repaired by LESSOR, at LESSOR'S option; if the leased PREMISES should be damaged to the extent that LESSOR should decide not to repair, the term of the Agreement shall end and the Agreement terminated. Alternatively, LESSEE may elect to make the required repairs and/or restoration at LESSEE'S sole cost and expense.
12. NO OBLIGATION TO REPAIR: Notwithstanding anything to the contrary in this Agreement, LESSOR shall have no obligation to repair the PREMISES or the Building in the event the damage or destruction is attributable to any act or omission of LESSEE, its agents, employees, invitees or licensees. In no event shall LESSOR be required to repair any damage to LESSEE'S own fixtures and personal property or any paneling, decorations, railings, floor coverings, or any LESSEE improvements or alterations installed or made on the PREMISES by or at the expense of the LESSEE. In the event the PREMISES or the modular buildings are substantially damaged or destroyed and LESSOR intends to rebuild for public purposes inconsistent with the Agreement, LESSOR may terminate the Agreement upon written notice to LESSEE. LESSEE shall have the right to rebuilding the facility at its sole expense; said rebuilding shall commence within one year of the date of the substantial damage or destruction. For purposes of this paragraph, a "substantially damaged or destroyed" shall mean fifty percent (50%) of the rentable area of the PREMISES or modular buildings.
13. DEFAULT BY LESSEE: Should LESSEE be in default in the performance of any provision of this Agreement for a period of more than ten (10) days following service of notice of such default, LESSOR may terminate this AGREEMENT and regain possession of the leased PREMISES in the manner provided by the laws of unlawful detainer in the State of California in effect at the date of such default.
14. ENTRY ONTO PREMISES: The LESSOR hereby reserves the right to enter upon the PREMISES occupied by the LESSEE at any reasonable time to inspect the same. LESSOR also reserves the right of ingress and egress to inspect, investigate and survey said premises as deemed necessary, and the right to do any and all work of any nature necessary for the preservation, maintenance, and operation of the premises. Lessee will be given reasonable notice when such work may become necessary and shall adjust operations in such a manner that LESSOR may proceed expeditiously.

15. SIGNS: LESSEE will not place or allow to be placed or maintained on the exterior of the PREMISES, or in the interior of the PREMISES if it is visible from the exterior, or in any vestibule of the PREMISES, any sign, letter in, advertising matter, or other item of any kind, and will not place or maintain any decoration, lettering, or advertising matter on the glass of any window or door of the PREMISES without the prior written consent of LESSOR. Such consent shall not be unreasonably withheld. All such signs or other items shall conform to the rules and regulations of the City of Alameda and shall relate solely to the business of the LESSEE.
16. WAIVER OF BREACH: The waiver by LESSOR or LESSEE of any breach of any provision of this Agreement, or any subsequent breach of the same provision of this Agreement, shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision of the Agreement.
17. TIME OF ESSENCE: Time is of the essence for the performance of each term, covenant and condition of this Agreement.
18. CALIFORNIA LAW GOVERNS: This Agreement shall be construed in full force in accordance with the laws of the State of California.
19. NO PARTNERSHIP: LESSEE and LESSOR are not partners and nothing herein contained shall be construed to create a partnership or joint venture in any sense.
20. ATTORNEYS' FEES: If either party brings any action against the other, declaratory or otherwise, arising out of this Agreement, including any suit by LESSOR for the recovery of Rent or possession of the PREMISES, and whether such litigation sounds in tort or in contract, the losing party shall pay the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not the action is prosecuted to judgment.
21. ABANDONMENT: Should the LESSEE abandon, be dispossessed, surrender or otherwise vacate the premises, the LESSOR, at LESSOR'S option, may immediately terminate this Agreement and enter the premises and remove all personal property.
22. HOLD HARMLESS: Except for loss, damages, liability, claims, suits, costs, and expenses whatsoever, including reasonable attorneys' fees, caused solely by the gross negligence of the City, its City Council, boards and commissions, officers and employees, LESSEE shall indemnify, defend and hold harmless City, its City Council, boards commissions, officers and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, regardless of the merits or outcome of any such claim or suit arising from or in any manner connected to LESSE'S negligent act or omission regarding performance of services or work conducted or performed pursuant to this Agreement.

23. **INSURANCE:** On or before the commencement of the term of this Agreement, LESSEE shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 23A, B, C, D, and E. Such certificates, which do not limit LESSEE'S indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, Attention: Risk Manager." It is agreed that LESSEE shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsement naming the City as additional insured shall be submitted with the insurance certificates.

A. **Coverage:**

LESSEE shall maintain the following insurance coverage:

- (1) **Workers' Compensation:**
Statutory coverage as required by the State of California.
- (2) **Liability:**
Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$ 500,000 each occurrence
	\$1,000,000 aggregate – all other

Property Damage: \$1,000,000 each occurrence
 \$ 250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automotive liability coverage in the following minimum limits:

Bodily Injury: \$ 500,000 each occurrence
Property Damage: \$ 100,000 each occurrence
Or
Combined Single Limit: \$ 500,000 each occurrence

(4) **Professional Liability:**

Professional liability insurance, which includes coverage for the professional acts, errors and omissions of Provider in the amount of at least \$1,000,000.

B. **Subrogation Waiver:**

LESSEE agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, LESSEE shall look solely to its insurance for recovery. LESSEE hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either LESSEE or City with respect to the service of LESSEE herein, a waiver of any right to subrogation, which any such insurer of said LESSEE may acquire against City by virtue of the payment of any loss under such insurance.

C. **Failure to Secure:**

If LESSEE at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the LESSEE'S name or as an agent of the LESSEE and shall be compensated by the LESSEE for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **Additional Insured:**

City of Alameda, its City Council, boards and commissions, officers, and employees shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any

loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **Sufficiency of Insurance:**

The insurance limits required by City are not represented as being sufficient to protect LESSEE. LESSEE is advised to confer with LESSEE's insurance broker to determine adequate coverage for LESSEE.

24. **TERMINATION:** This Agreement may be terminated at anytime, with or without cause by LESSOR or LESSEE, upon written notice given to the other party at least sixty (60) days before the date specified for such termination. In the event LESSEE fails or refuses to perform any of the provisions thereof at the time and in the manner required hereunder, LESSEE shall be deemed in default in the performance of the Agreement. If such default is not cured within a period of ten (10) days after receipt by LESSEE from the City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, City may terminate the Agreement forthwith by giving to the LESSEE written notice thereof.
25. **PERMITS AND LICENSES:** LESSEE, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City of Alameda Business License that may be required in connection with the performance of service hereunder.
26. **ENTIRE AGREEMENT:** This Agreement expresses the entire relationship between the parties, and may not be amended except by a writing signed by both parties.
27. **NOTICES:** All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered or sent by United States mail, registered or certified, postage prepaid, return receipt required, at the following address:

LESSOR: Recreation & Park Director
City of Alameda
Recreation & Park Department
2226 Santa Clara Avenue
Alameda, CA 94501

LESSEE: Karen Zimmerman
Ken Edgerly
dba ABC Preschool
1525 Bay Street
Alameda, CA 94501

28. TRANSFER: LESSEE shall not assign, sublease, hypothecate, or transfer this Agreement or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire not right or interest by reason of such attempted assignment, hypothecation or transfer.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the month, date, and year first above written.

LESSOR

LESSOR

CITY OF ALAMEDA

ABC PRESCHOOL

BY _____
John Russo, City Manager
City of Alameda

BY Karen Zimmerman
Karen Zimmerman, Owner
ABC Preschool
Ken Edgerly
Ken Edgerly, Owner
ABC Preschool

Recommended by:

Dale Lillard
Dale Lillard,
Recreation & Parks Director

Donna Mooney, Fatimah Fai2
~~Interim~~ City Attorney
Assist.

3/3/02

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

APPROVING AND AUTHORIZING THE EXECUTION OF LEASE OF REAL
PROPERTY LOCATED AT 1525 BAY STREET BETWEEN CITY, AS LESSOR,
AND KAREN ZIMMERMAN AND KENNETH EDGERLY, AS LESSEE FOR
OPERATION OF ABC PRESCHOOL
(REQUIRES FOUR AFFIRMATIVE VOTES)

Approved as to Form

City Attorney

WHEREAS, the City of Alameda and Karen Zimmerman and Kenneth Edgerly DBA ABC Preschool (Lessee), previously entered into a lease of certain City owned properties at a1525 Bay Street; and

WHEREAS, the term of the lease agreement ended on September 30, 2011 and Lessee currently has a month-to-month tenancy; and

WHEREAS the Lessee wishes to renew the lease for a three-year period effective November 1, 2011, and wishes to have two three-year options to renew; and

WHEREAS, a form of the new lease containing the covenants, terms and conditions to be entered into is attached to the staff report presented to the City Council at the October 18, 2011, City Council meeting; and

WHEREAS, the long-term lease agreement will provide ABC Preschool with the continuity and stability required to operate a preschool; and

WHEREAS, pursuant to City Charter, Article III, Sec. 3-10, no real property of the City shall be leased for a period in excess of one year or sold, except upon the affirmative vote of four members of the City Council; and

WHEREAS, the proposed lease does not have a significant effect on the environmental, and therefore, is exempt under Section 15301(e)(1) of the California Environmental Quality Act (CEQA) Guidelines.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Alameda, and upon the affirmative vote of four members of the City Council that:

Section 1. The City Council of the City of Alameda hereby approves and authorizes the City Manager to execute the Lease of Real Property between lessor and lessee for operation of ABC Preschool.

Section 2 This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk
City of Alameda

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the _____ day of _____, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2011.

Lara Weisiger, City Clerk
City of Alameda